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*Substantive Determinations
Bergner, Walter and Annette
11-2*

STATE OF NEW YORK
STATE TAX COMMISSION

See also:

*Income Tax Determinations, A-2
Bergner, Walter and Annette
5/18/67 - 5/19/67*

IN THE MATTER OF THE APPLICATION
OF
WALTER AND ANNETTE BERGNER
FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEAR 1957

Walter and Annette Bergner, having duly filed applications for revision or refund of personal income tax under Article 16 of the Tax Law for the calendar year of 1957, and a hearing having been held in connection therewith on the 15th day of May, 1967, at the office of the State Tax Commission, 80 Centre Street, New York, N. Y., before Vincent P. Molineux, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers were represented by Sherman Heller, C.P.A., 10 East 40th Street, New York, N. Y., and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a timely return of income under Article 16 of the Tax Law for the year 1957 and paid the tax shown to be due thereon.

(2) That the amount of taxable income for 1957 as returned to the United States Treasury Department was changed by the Commissioner of Internal Revenue showing an increase in income of \$2,657.09, which was not reported to the State of New York as required by Section 367 of the Tax Law.

(3) That Assessment No. TF-342592 was issued September 25, 1963, based upon the Federal adjustments.

(4) That it is claimed by the taxpayers that there was no necessity to inform the State Tax Commission of the changes for the reason that, at the conclusion of the Federal examination, the period of three years provided in Section 373 of the Tax Law had expired.

(5) That pursuant to Section 373 of the Tax Law, "if a taxpayer shall fail to report a change or correction by the commissioner of internal revenue * * * the amount of tax due may be assessed and collected at any time."

Upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

DETERMINES:

(A) That the Assessment No. TF-342592 imposing additional tax for the year 1957 was timely issued and was not barred by the Tax Law at the time of such issuance; that, accordingly, the additional tax assessed against the taxpayers for the year 1957 under Article 16 of the Tax Law is correct and does not include any tax or other charge which is not lawfully due and owing.

Dated: Albany, New York this 9th day of August , 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER